that private reports of the financial standing of a third person, made to one having an interest in the matter, are privileged. *Fahr* v. *Hayes*, 50 N. J. L. 275, 13 Atl. 261; *Richardson* v. *Gunby*, 88 Kan. 47, 48, 127 Pac. 533, 534. See *King* v. *Watts*, 8 C. & P. 614, 615. And it follows that such communications by an agent to his principal are privileged. *Bohlinger* v. *Germania Ins. Co.*, 100 Ark. 477, 140 S. W. 257; *Mead* v. *Hughes*, 7 T. L. R. 291. Since the defendant may be considered as the agent of the subscriber, the principal case is easily explained. But since a profit-making agency is just as truly the agent of the subscriber, the English rule imposing liability on such a company is an anomaly in the law of libel which may be justified only by the modern tendency to impose on businesses dangerous to life, property or reputation, the risks incidental to their operation. The distinction taken by the English courts is analogous to that between a private, gratuitous surety and a surety company. See 29 HARV. L. REV. 314.

MASTER AND SERVANT — ASSUMPTION OF RISK — STATUTORY ABROGATION: EFFECT ON DEFENSE OF CONTRIBUTORY NEGLIGENCE. — A New York statute abrogates the defense of assumption of risk, but leaves unaltered the defense of contributory negligence. (BIRDSEYE, CON. LAWS OF N. Y. 202, p. 1624.) The plaintiff, a longshoreman, sues under this statute, for injuries sustained by a fall from an obviously insecure and unsafe ladder, which had been furnished him as the only means of descending into the hold where he was working. *Held*, that the plaintiff may be barred on account of contributory negligence if found to have used the ladder carelessly, but not on account of the fact that he used it at all. *Maloney* v. *Cunard Steamship Co.*, 54 N. Y. Law Jour. 2067 (Court of Appeals).

The defenses of contributory negligence and assumption of risk, though frequently confused, are fundamentally distinct. See 49 L. R. A., 49, note. For assumption of risk bars the employee on the ground that by his acquiescence he has either waived or negatived the employer's negligence — while contributory negligence bars him because his action or inaction contrary to the standard of the ordinary prudent man, was a contributing cause of the injury. See Bohlen, "Voluntary Assumption of Risk," 20 HARV. L. REV. 14, 17, 18. Still the two defenses are frequently concurrent. Thus the mere use of an appliance which is so dangerously defective that the ordinary reasonable man would refuse to use it at all, will bar the employee on both grounds. See *Narramore* v. *Cleveland, etc. Ry. Co.*, 96 Fed. 298, 304; *Bradburn* v. *Wabash R. Co.*, 134 Mich. 575, 579, 96 N. W. 929, 931. Hence, in the principal case, even though the defense of assumption of risk has been removed, a narrow construction of the statute would allow the jury to refuse recovery to the plaintiff merely because he used the ladder. But as it is inconceivable that a legislature would intend to abrogate the defense that an employee, by encountering his employer's negligence, has waived it, and yet bar the employee on the ground that he was contributorily negligent in encountering it; a broader reading of the statute, by which the defense of contributory negligence in so far as it is based on the mere use of a dangerous appliance is impliedly removed, is clearly more desirable.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — MEASURE OF COMPENSATION — GENERAL FALL IN WAGES DISTINGUISHED FROM LOSS IN EARNING CAPACITY THROUGH ACCIDENT. — A workman was partially incapacitated. The Massachusetts act provides that in case of partial incapacity the workman is to be paid "one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter." (1911, MASS. STAT. c. 751, pt. 2, § 10.) Before the accident he was earning $22 a week; now he is able to earn only $13.20. The Industrial Board found that if he had not been injured he would earn $19.40 in